

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on February 25, 2003 at 10:10 A.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Bill Tash, Chairman (R)
Sen. Aubyn Curtiss, Vice Chairman (R)
Sen. Gregory D. Barkus (R)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Debbie Shea (D)
Sen. Ken Toole (D)

Members Excused: Sen. Sherm Anderson (R)
Sen. Jon Ellingson (D)

Members Absent: None.

Staff Present: Krista Lee Evans, Legislative Branch
Fredella Haab, Recording Secretary
Shirley Herrin, Transcribing Secretary

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: SB 437, SB 456, SB 409, SB 436

EXECUTIVE ACTION ON SB 437

10:11 **Motion/Vote:** SEN. MCGEE moved that SB 437 BE INDEFINITELY POSTPONED. Motion carried.

EXECUTIVE ACTION ON SB 456

Motion: SEN. DAN MCGEE moved that SB 456 DO PASS. **Motion:** SEN. BARKUS moved that SB 456 BE AMENDED SB045601.alk
EXHIBIT(nas42a01)

Discussion:

Krista Lee Evans explained the reason the whole section was stricken was because it was the only amendment to 90-6-305 MCA.

Vote: Motion on the amendment carried unanimously.

Motion/Vote: SEN. MCGEE moved that SB 456 DO PASS AS AMENDED.
Motion carried unanimously.

EXECUTIVE ACTION ON SB 409

Motion: SEN. GREGG BARKUS moved that SB 409 DO PASS. **Motion:** SEN. KEN TOOLE moved that SB 409 BE AMENDED SB040901.akl
EXHIBIT(nas42a02). Krista Lee Evans explained the amendment puts in a WHEREAS clause on page 2, line 21, stating that the State recognized the importance of working with the tribe and that they have negotiated the Otter Creek Settlement Agreement and they want to involve the tribe in the Cultural Resource Inventory Assessment, and also on page 3, there is a new subsection 4 that says "Nothing in this section is intended to alter, diminish or impair the Otter Creek Settlement Agreement".

Discussion:

After a brief discussion the question was called on the amendment. **Vote:** Motion that SB 409 BE AMENDED (SB040901.akl)carried unanimously.

Motion: SEN. MCGEE moved that SB 409 DO PASS AS AMENDED.

Discussion:

Krista Lee Evans stated that the sponsor, SEN. COREY STAPLETON, had another set of amendments that Todd Everts had compiled. SB040901.ate **EXHIBIT**(nas42a03). She explained the amendments in detail.

Motion: SEN. MCGEE moved that SB 409 BE AMENDED again SB040901.ate. **Vote:** Motion carried.

Motion: SEN. MCGEE moved that SB 409 DO PASS AS AMENDED, AS AMENDED.

Discussion:

SEN. KEN TOOLE stated he had not heard the opening on the bill and inquired if the bill was basically to get the state to move ahead doing inventory and assessment work, getting ready for leasing. He also asked about section three, environmental review compliance. **CHAIRMAN TASH** referred the question to **Leo Berry**, who replied that the purpose of that is to exempt the actual leasing activity from an environmental assessment or environmental impact statement as long as the terms of the lease contain the requirement that an impact statement be done, so you don't end up with two impact statements.

Vote: **SEN. MCGEE** motion that SB 409 DO PASS AS AMENDED carried unanimously.

EXECUTIVE ACTION ON SB 436

Motion: **SEN. DEBBIE SHEA** moved that SB 436 DO PASS.

Discussion:

SEN. SHEA reviewed the survey that was compiled by Moore Information, from Portland, OR, in January. "Public Opinion Research" **EXHIBIT (nas42a04)**

She stated in summary that most Montana voters - 80% want elected officials to improve the economy - most Montana voters - 84% believe it is possible to have a healthy mining industry and a healthy environment at the same time - and a substantial majority, 58% support replacing I-137 with a new law that includes new safety and environmental restrictions but allows more mining. **SEN. SHEA** presented conceptual amendments **EXHIBIT (nas42a05)** and asked Jan Sensibaugh to address them.

Jan Sensibaugh, Director, Department of Environmental Quality, explained the existing language in the bill makes the environmental impact statement review do what is known as substantive -requiring that any significant impact that they discover when they do an Environmental Impact Statement (EIS), be mitigated in the permit. She stated they currently are only allowed to mitigate permits that have an underlying statute associated with them like air quality or water quality. She continued that the existing language in the bill would allow them to mitigate any significant impact that they find when they do the (EIS). It would allow them to go much further in putting requirements in a permit or a mine than they are currently allowed to do.

SEN. SHEA read her conceptual amendment. She stated she offered the amendments after hearing the testimony on February 24th from Stuart Sanderson, Pres/CEO, Colorado Mining Association and Raymond E. Krauss, Environmental Planner, Santa Rosa, California and it seemed to her it was a real clear and clean way to keep tabs on the operation.

Motion: **SEN. MCGEE** moved that SB 409 BE AMENDED with **SEN. SHEA's** conceptual amendments.

Discussion:

SEN. TOOLE inquired if a permit would or would not require mitigation? **Jan Sensibaugh** responded they are striking the language to mitigate and are substituting having a third party certification that will come at critical construction phases that will oversee the design and implementation of what the permit does. **SEN. TOOLE** asked who the independent third party would be. **SEN. SHEA** replied that would be up to the Board of Environmental Review.

SEN. MC GEE asked Jan Sensibaugh whether the Department will be able to mitigate significant environmental impacts under the language of the proposed amendment. **Jan Sensibaugh** replied no, they can mitigate significant impacts from the underlying statutes - water quality - air quality - solid waste - hazardous waste - those laws that are already on the books. They could not mitigate the things like noise, wildlife, etc. that they don't have underlying statutory authority to do.

SEN. BEA MCCARTHY inquired if it would be possible to keep lines 16 and 17 with the first paragraph of the amendment. **Jan Sensibaugh** responded they could leave lines 16 and 17 and then add the insert in the amendment. **SEN. MCCARTHY** asked the sponsor, **SEN. SHEA** if that would be agreeable with her, to which she replied in the affirmative.

Substitute Motion: **SEN. MCCARTHY** made a substitute motion that **SB 436 BE AMENDED** to read that they leave the stricken language of line 16 and line 17 and then add the insert that **SEN. SHEA** has suggested in her amendment.

After a brief discussion on the language clean-up, which the committee entrusted to Krista Lee Evans, the question on **SEN. SHEA's** conceptual amendments and adjustments was called for.

Vote: Motion carried unanimously.

Motion: **SEN. MCGEE** moved that SB 436 DO PASS AS AMENDED.

Discussion:

SEN. TOOLE moved **SEN. JON ELLINGSON'S** amendment SB043601.akl.

EXHIBIT (nas42a06) .

Krista Lee Evans explained the amendment adds 4 new WHEREAS, clauses, and on page 1, line 27, a new THEREFORE, is inserted. Amendment 4 - The "for" and "against" statements have been sticken and replaced with new language that is reflected in the amendments.

SEN. SHEA expressed her concerns about the proposed amendments stating she came into this process wanting to do the right thing. Knowing how important mining is to this state and knowing the mistakes of the past, they went the full measure to make sure that in answering and responding to the people in the survey they took extra precautions to make sure it was done right.

SEN. TOOLE stated he hadn't had much of a discussion with **SEN. ELLINGSON** about the amendments but he thinks after the hearing there are very clearly different perspectives here and that the WHEREAS' are accurate and ought to be included, and he supports the amendment.

SEN. GLENN ROUSH said he liked the language on No. 5 and No. 6 much better than what's on the bill. He expressed his support for the amendment.

SEN. TOOLE questioned if they should segregate the amendment so they could look at the two issues separately.

SEN. SHEA responded that she would like to say something about the language that is going to go onto the ballot. Cyanide is not the issue here, cyanide has become the scary word out there and it was very well orchestrated that that was going to be the message out to the people. She said they have been very clear in the language about cyanide - it says using cyanide or processing methods with new environmental safeguards.

SEN. TOOLE moved to segregate No. 5 and No. 6. He has some comments about No. 5 and No. 6. He asked if the committee wanted to dispose of the rest of it. He moved to dispose of No. 1 through No. 4. The motion failed.

SEN. TOOLE stated he was concerned because he thinks the existing language can be read two ways concerning the new environmental protections. He said it can be read thinking you are going to be mining using cyanide ore with processing methods with environmental safeguards that are inherent in the process. He continued he didn't hear anything like that in the testimony, if

there is a new technological advance or it implies there is something else happening in statute somewhere else that is providing additional protections. He thinks the current language is very misleading.

SEN. MCGEE responded that he had surveyed the liner for the retention ponds and pits at the Stillwater Mine and they had laid down some sort of half inch thick impermeable plastic liners inside the ponds and put monitors between each layer so in case something pokes through, you have three times before anything gets down underneath, plus you have monitoring all around the pit itself to see whether anything ever gets into the ground water. If you are in a mine, what you have is rock, so you can see if anything ever gets from under the leaching pond. He said he doesn't know of any gold mine in Montana using that kind of technology and asked Jan Sensibaugh if when they issue a permit for a gold mine, would they not make some of those kinds of technologies mandatory for a gold mine.

Jan Sensibaugh replied they would, as the science advances, they always go with the new science.

SEN. MCGEE continued that he thinks one of the reasons they can go forward with mining activity in this state is, not only the rules - not only the laws - not only the standards - but all of the environmental groups are not going to let somebody get away with what has happened at Zortman-Landusky or some of the other previous mines.

SEN. MCCARTHY said she lives in an area, everyone knows, is the Super Fund. They are continually putting a new bid out - doing a new cleanup - going through another section, and every time they do a new one, there is new technology out there. EPA is in there constantly, making sure that the latest technology is used, because not only do they want to make it safe for the mining industry, they want to make it safe for the environment and the people of the state of Montana. She stated she thinks it is something they need to keep in mind as they work through this, just because that was the technology of ten years ago it certainly doesn't freeze them in time for what they are doing today, and they all need to grow up and accept that.

SEN. TOOLE expressed concern that the new technology **SEN. MCGEE** is talking about is not really new, and agreed with **SEN. ROUSH** that the other language is more straight forward.

SEN. LAIBLE stated he thinks there are new safeguards in the bill, that DEQ has additional authority, and with the conceptual

amendments that **SEN. SHEA** has proposed, there is another element, which is a third party oversight. He said there are no guarantees for anything, but he thinks a lot of the risk has been taken out with the conceptual amendments that **SEN. SHEA** has presented.

SEN. MCCARTHY called for the question to segregate Number 5 and 6 of the amendment SB043601.akl. **Motion failed.**

SEN. MCGEE asked if the bill was back to his original motion to move the bill as amended?

SEN. TOOLE stated he wished to address the money issue in elections - he said the only fair election we had was the one where corporate contributions were prohibited. He said the problem we have with elections in the US and in Montana is the effect of money in them.

SEN. GARY PERRY related that when he first voted on I-137 he was in favor of it. He said at that time he was a typical citizen of Montana who really didn't truly know the issue. He explained the issue with him at that time was the word "cyanide" and he voted for I-137 because cyanide sounded bad to him. He noted he was an engineer and should have looked into the matter on a technical basis further than he did. He stated he would like to have the opportunity to alter his vote.

SEN. ROUSH declared he did not object to expanding the economy of Montana, that he had voted on many, many issues since 1999 that did exactly that. He contended the problem he had with the bill is that it doesn't address the need to take the Initiative back to the people to correct this problem. He stated the mining community has the money and the time to take the effort to go through the initiative process.

SEN. SHEA said she was sorry that **SEN. TOOLE** had to leave the committee meeting because she wished to relate a hypothetical situation where she and **SEN. TOOLE** were both running for Governor and he started right after the primary and she didn't start until the second week in October - and even though they spent the same amount of money - his message had been out there and people had already made up their minds about how to vote. She continued that **SEN. TOOLE** had talked about money from environmental groups, and stated those groups get their money from Liz Claiborne, Patagonia, etc. - those are big companies that are giving grant money to these grass roots organizations. Those companies have deep coffers and are wide-spread, Washington, Connecticut, New York, New Jersey, Colorado, Minnesota and on and on.

SEN. SHEA addressed the issue of the initiative process, which is a way that people can become a part of their government, and another way is through their elected representatives. She declared that they have choices in the legislature, they can just turnover what the people have said or they can answer the people who responded to the survey, as she has done, and attempt to send the issue back to the people.

SEN. BARKUS proclaimed that he had come to the meeting today prepared to vote against SB 436. He explained he had been very involved with the fight against I-137, financially and publicly and was very supportive of the industries. He said he had expected a little tightening of the environmental standards, which he sees in the amendments presented by **SEN. SHEA** today, and is now in support of the bill.

The question was called for on SB 436 as conceptually amended.

Vote: **Motion carried 9-3 with ROUSH voting no and ELLINGSON, and TOOLE voting no by proxy. ANDERSON voted yes by proxy.**

ADJOURNMENT

Adjournment: 11:20 A.M.

SEN. BILL TASH, Chairman

FREDELLA HAAB,
Recording Secretary

SHIRLEY HERRIN,
Transcribing Secretary

BT/FH/SH

EXHIBIT (nas42aad)